

In the Matter of Merchant Mariner's Document No. Z-595417 and all other Seaman Documents
Issued to: Fitzroy Gerald

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1247

Fitzroy Gerald

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 4 November 1960, an Examiner of the United States Coast Guard at Norfolk, Virginia suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleged that while serving as a wiper on board the United States SS AMERICAN MANUFACTURER under authority of the document above described, on or about 29 October 1960, Appellant assaulted and battered a member of the crew, wiper Jose Vega, with a piece of dunnage. In a joint hearing, Vega was charged with assault and battery upon Appellant with a penknife. The Examiner concluded that both seamen were guilty of mutual combat with the alleged dangerous weapons.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Appellant, Vega, oiler Sanchez and steward utilityman Prescott. Appellant agreed to consider his testimony in his defense as well as in the case against Vega.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twelve months outright plus twelve months' probation. Vega did not appeal a similar suspension.

FINDINGS OF FACT

On 29 October 1960, Appellant was serving as a wiper on board the United States SS AMERICA MANUFACTURER and acting under the authority of his document while the ship was at Newport News, Virginia.

About 0100 on this date, Jose Vega returned on board with some beer and went to the room he shared with the other two wipers,

Appellant and Sanchez. Vega awakened Sanchez and they drank beer in the passageway. Appellant awoke and objected to the door being left open. About 0230, Vega again went into the room and did not close the door when he left. Appellant went to the passageway and started arguing with Vega about leaving the door open. About this time, Prescott passed the three seamen on his way to the nearby bathroom.

The argument continued in the passageway and room until Appellant either hit Vega in the face with his hand (Vega's version) or knocked Vega's fingers away from Appellant's face (Appellant's version). Vega then took out a penknife, with a one and three-quarters inches sharp blade, and cut Appellant on the chest--an 18 to 20 inch gash which required 42 stitches. Appellant ran toward the weather deck with Vega in pursuit. Prescott left the bathroom at this time and saw only the two seamen running. Appellant picked up a piece of dunnage about 8 feet by 4 inches by 1 inch. He hit Vega with it twice in the head before he fell to the deck. Sanchez reappeared and saw Vega lying on the weather deck and Appellant with the piece of board in his hand. Several stitches were required for a wound on Vega's head.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended, in part, that Appellant acted in self-defense after he was seriously injured; the testimony of Prescott, the only impartial witness, should have been given more weight; the eight-foot board allegedly used by Appellant should have been received in evidence since it was too long to have been used in the passageway as testified by Vega.

APPEARANCE: Benjamin B. Sterling, Esquire, of New York City, of Counsel.

OPINION

The Examiner concluded that the two seamen engaged in a voluntary fight with dangerous weapons but refused to accept the testimony of either as to which one was the aggressor with his weapon. Appellant stated that the events occurred substantially as in the above findings of fact. Vega's testimony was somewhat contradictory but he stated that Appellant "came back" to the passageway and hit Vega with a three and a half foot long piece of board before he pulled out his knife; Appellant chased Vega with the board. The Investigating Officer's theory was, as expressed in both his opening statement and closing argument, that Vega first used the knife and then chased Appellant to the weather deck; but Appellant used excessive force in self-defense when he continued to strike Vega with the board after knocking him to the deck.

Sanchez testified that he went to the bathroom when Appellant and Vega were arguing in the room after Vega hooked the door open; just after leaving the bathroom, he saw Vega on the weather deck and Appellant with a piece of board, about eight feet long, in his hand. Sanchez did not testify

that he saw any blows struck by Appellant. This disagrees with Appellant's testimony only to the extent that he stated that Sanchez was in the wipers' room rather than the bathroom just before Vega cut Appellant with the penknife.

Prescott's testimony corroborates Appellant's version. Prescott testified that Vega was chasing Appellant toward the weather deck; he did not see any weapons. The Examiner rejected Prescott's testimony because, when asked how well he could see without eyeglasses, he replied: "No good at all without the glasses."

Despite Prescott's impaired vision, it is my opinion that his testimony is reliable to the extent that it corroborates Appellant's testimony that he was the one being chased after he had been injured, and that Appellant picked up the piece of board to defend himself after he was outside on the weather deck. Vega and Appellant agree that one of them chased the other. Hence, it is reasonable to conclude that Prescott saw them and that he would also have seen the large piece of board if it had been in Appellant's possession at this time. Since Prescott did not see any weapons, the seaman with the comparatively small knife must have been in pursuit if the other.

As to whether Appellant used excessive force after picking up the board, there is no evidence that he struck Vega after he fell to the deck. Considering the serious injury already received by Appellant, this cannot be considered to have been greater force than reasonably appeared to Appellant to be necessary to protect himself from further bodily injury from the knife held by the pursuing Vega. Consequently, I agree that Appellant's conduct was justified on the ground of self-defense.

The finding that Appellant wrongfully engaged in mutual combat is reversed; the specification and charge are dismissed.

It is not necessary to consider additional contentions raised on appeal in view of this conclusion.

ORDER

The order of the Examiner dated at Norfolk, Virginia on 4 November 1960 is VACATED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 14th day of June, 1961.